

§ 3486.4

approved exploration or resource recovery and protection plans, or orders of the authorized officer, and such noncompliance does not threaten immediate and serious damage to the mine, the deposit being mined, valuable ore-bearing mineral deposits or other resources, or affect the royalty provisions of the rules of this part, the authorized officer shall serve a notice of noncompliance upon the operator/lessee by delivery in person to him or his agent, or by certified mail, return receipt requested, addressed to the operator/lessee at his last known address. Failure of the operator/lessee to take action in accordance with the notice of noncompliance within the time limits specified by the authorized officer shall be grounds for cessation of operations upon notice by the authorized officer. The authorized officer may also recommend to the authorized officer the initiation of action for cancellation of the Federal lease or license and forfeiture of any Federal lease bonds.

(b) The notice of noncompliance shall specify in what respect(s) the operator/lessee has failed to comply with the rules of this part, the terms and conditions of the Federal lease or license, the requirements of approved exploration or resource recovery and protection plans, or orders of the authorized officer, and shall specify the action that must be taken to correct such noncompliance and the time limits within which such action must be taken.

(c) If, in the judgment of the authorized officer, an operator/lessee is conducting activities which fail to comply with the rules of this part, the terms and conditions of the Federal lease or license, the requirements of approved exploration or resource recovery and protection plans, or orders of the authorized officer, and/or which threaten immediate and serious damage to the mine, the deposit being mined, valuable ore-bearing mineral deposits, or, regarding exploration, the environment, the authorized officer shall order the immediate cessation of such activities without prior notice of noncompliance.

(d) A written report shall be submitted by the operator/lessee to the authorized officer when such noncompli-

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ance has been corrected. Upon concurrence by the authorized officer that the conditions which warranted the issuance of a notice or order of noncompliance have been corrected, the authorized officer shall so notify the operator/lessee in writing.

(e) The authorized officer shall enforce requirements of SMCRA only if he finds a violation, condition, or practice that he determines to be an emergency situation for which an authorized representative of the Secretary is required to act pursuant to 30 CFR 843.11 and 843.12.

[47 FR 33179, July 30, 1982; 47 FR 53366, Nov. 26, 1982. Redesignated at 48 FR 41589, Sept. 16, 1983]

§ 3486.4 Appeals.

Decisions or orders issued by the BLM under part 3480 of this title may be appealed pursuant to part 4 of this title.

[48 FR 41593, Sept. 16, 1983]

Subpart 3487—Logical Mining Unit

§ 3487.1 Logical mining units.

(a) An LMU shall become effective only upon approval of the authorized officer. The effective date for an LMU may be established by the authorized officer between the date that the authorized officer receives an application for LMU approval and the date the authorized officer approves the LMU. The effective date of the LMU approval shall be determined by the authorized officer in consultation with the LMU applicant. An LMU may be enlarged by the addition of other Federal coal leases or with interests in non-Federal coal deposits, or both, in accordance with paragraph (g) of this section. An LMU may be diminished by creation of other separate Federal leases or LMU's in accordance with paragraph (g) of this section.

(b) The authorized officer may direct, or an operator/lessee may initiate, the establishment of an LMU containing only Federal coal leases issued after August 4, 1976. The authorized officer may direct, or an operator/lessee may initiate, the establishment of an LMU containing Federal coal leases issued prior to August 4, 1976, provided that

the operators/lessees consent to making all such Federal leases within the LMU subject to the uniform requirements for submittal of a resource recovery and protection plan, LMU recoverable coal reserves exhaustion, diligent development, continued operation, MER, advance royalty, and royalty reporting periods (but not royalty rates) made applicable by the LMU stipulations and the rules of this part. Any Federal lease included in an LMU shall have its terms amended as necessary so that its terms and conditions are consistent with the stipulations required for the approval of the LMU pursuant to paragraph (e) of this section.

(c) *Contents of an LMU application.* An operator/lessee must submit five copies of an LMU application to the authorized officer if the operator/lessee is applying on his own initiative to combine lands into an LMU, or if directed to establish an LMU by the authorized officer in accordance with paragraph (b) of this section. Such application shall include the following:

(1) Name and address of the designated operator/lessee of the LMU.

(2) Federal lease serial numbers and description of the land and all coal beds considered to be of minable thickness within the boundary of the LMU. Identification of those coal beds proposed to be excluded from any Federal lease which would be a part of the LMU.

(3) Documents and related information supporting a finding of effective control of the lands to be included in the LMU.

(4) Sufficient data to enable the authorized officer to determine that MER of the Federal recoverable coal reserves will be achieved by establishment of the LMU. If a coal bed, or portion thereof, is proposed not to be mined or to be rendered unminable by the operation, the operator/lessee shall submit appropriate justification to the authorized officer for approval.

(5) Any other information required by the authorized officer.

(6) If any confidential information is included in the submittal and is identified as such by the operator/lessee, it shall be treated in accordance with § 3481.3 of this title.

(d) *Consultation.* (1) Prior to approval, the authorized officer shall consult with the operator/lessee about any Federal recoverable coal reserves within the LMU that the operator/lessee does not intend to mine and any Federal recoverable coal reserves that the operator/lessee intends to relinquish. The authorized officer shall also consult with the operator/lessee about Federal lease revisions to make the time periods for resource recovery and protection plan submittals, the 40-year LMU recoverable coal reserves exhaustion requirement, and diligent development, continued operation, advance royalty and Federal rental and royalty collection requirements applicable to each producing Federal lease consistent with the LMU stipulations.

(2) The public participation procedures of § 3481.2 of this title shall be completed prior to approval of an LMU.

(e) *Stipulations.* Prior to the approval of an LMU, the authorized officer shall notify the operator/lessee and responsible officer of the surface managing agency of stipulations required for the approval of the proposed LMU. The LMU stipulations shall provide for:

(1) The submittal, within 3 years from the effective date of LMU approval, of a resource recovery and protection plan that contains the information required by § 3482.1(c) of this title for all Federal and non-Federal lands within the LMU.

(2) A schedule for the achievement of diligent development and continued operation for the LMU. The schedule shall reflect the date for achieving diligent development and maintaining continued operation of the individual Federal leases included in the LMU, consistent with the rules of this part. An operator/lessee may request to pay advance royalty in lieu of continued operation in accordance with § 3482.1(c) of this title.

(3) Uniform reporting periods for Federal rental and royalty on Federal leases.

(4) The revision, if necessary, of terms and conditions of the individual Federal leases included in the LMU. The terms and conditions of the Federal leases, except for Federal royalty rates, shall be amended so that they

are consistent with the stipulations of the LMU.

(5) Estimates of the Federal LMU recoverable coal reserves, and non-Federal LMU recoverable coal reserves, using data acquired by generally acceptable exploration methods.

(6) Beginning the 40-year period in which the reserves of the entire LMU must be mined, on one of the following dates—

(i) The effective date of the LMU, if any portion of the LMU is producing on that date;

(ii) The date of approval of the resource recovery and protection plan for the LMU if no portion of the LMU is producing on the effective date of the LMU; or

(iii) The date coal is first produced from any portion of the LMU, if the LMU begins production after the effective date of the LMU but prior to approval of the resource recovery and protection plan for the LMU.

(7) Any other condition that the authorized officer determines to be necessary for the efficient and orderly operation of the LMU.

(f) The authorized officer may approve an LMU if it meets the following criteria:

(1) The LMU fully meets the LMU definition.

(2) The LMU application demonstrates that mining operations on the LMU, which may consist of a series of excavations, will:

(i) Achieve maximum economic recovery of Federal recoverable coal reserves within the LMU. In determining whether the proposed LMU meets this requirement, BLM, as appropriate, will consider:

(A) The amount of coal reserves recoverable from the proposed LMU compared to the amount recoverable if each lease were developed individually; and

(B) Any other factors BLM finds relevant to this requirement;

(ii) Facilitate development of the coal reserves in an efficient, economical, and orderly manner. In determining whether the proposed LMU meets this requirement, BLM, as appropriate, will consider:

(A) The potential for independent development of each lease proposed to be included in the LMU;

(B) The potential for inclusion of the leases in question in another LMU;

(C) The availability and utilization of transportation and access facilities for development of the LMU as a whole compared to development of each lease separately;

(D) The mining sequence for the LMU as a whole compared to development of each lease separately; and

(E) Any other factors BLM finds relevant to this requirement; and

(iii) Provide due regard to conservation of coal reserves and other resources. In determining whether the proposed LMU meets this requirement, BLM, as appropriate, will consider:

(A) The effects of developing and operating the LMU as a unit; and

(B) Any other factors BLM finds relevant to this requirement.

(3) All single Federal leases that are included in more than one LMU shall be segregated into two or more Federal leases. If only a portion of a Federal lease is included in an LMU, the remaining land shall be segregated into another Federal lease. The authorized officer will consult with the authorized officer about the segregation of such Federal leases. The operator/lessee may apply to relinquish any such portion of a Federal lease under 43 CFR 3452.1.

(4) The operator/lessee has agreed to the LMU stipulations required by the authorized officer for approval of the LMU.

(5) The LMU does not exceed 25,000 acres, including both Federal and non-Federal lands.

(6) A lease that has not produced commercial quantities of coal during the first 8 years of its diligent development period can be included in an LMU only if at the time the LMU application is submitted:

(i) A portion of the LMU under consideration is included in a SMCRA permit approved under 30 U.S.C. 1256; or

(ii) A portion of the LMU under consideration is included in an administratively complete application for a SMCRA permit.

(g) The authorized officer will state in writing the reasons for the decision on an LMU application.

(h) *Modification of an LMU.* (1) The boundaries of an LMU may be modified either upon application by the operator/lessee and approval of the authorized officer after consultation with the responsible officer of the surface managing agency, or by direction of the authorized officer after consultation with the authorized officer. In accordance with §3482.2(a)(3) of this title, the authorized officer may adjust only the estimate of LMU recoverable coal reserves pursuant to departmental actions or orders that modify the LMU boundaries, or upon approval of an operator/lessee application.

(2) Upon application by the operator/lessee, an LMU may be enlarged by the addition of other Federal coal leases or with interests in non-Federal coal deposits, or both. The LMU boundaries may also be enlarged as the result of the enlargement of a Federal lease in the LMU, pursuant to 43 CFR part 3432. An LMU may be diminished by creation of other separate Federal leases or LMU's or by the relinquishment of a Federal lease or portion thereof, pursuant to 43 CFR part 3452.

(3) In considering an application for the modification of an LMU, the authorized officer shall consider modifying the LMU stipulations, including the production requirement for commercial quantities.

(4) The authorized officer will not extend the 40-year period in which the reserves of the entire LMU must be mined, as specified at paragraph (e)(6) of this section, because of the enlargement of an LMU or because of the modification of a resource recovery and protection plan.

(i) *Administration of LMU operations.* An LMU shall be administered in accordance with the following criteria:

(1) Where production from non-Federal lands in the LMU is the basis, in whole or in part, for satisfaction of the requirements for diligent development or continued operation, the operator/lessee shall provide a certified report of such production, as determined by the authorized officer. The certified report shall include a map showing the area mined and the amount of coal mined.

(2) *Diligent development, continued operation and advance royalty.* Operators/lessees must comply with the diligent development, continued operation, and advance royalty requirements contained at §§3483.1 through 3483.6 of this title.

(3) Operators/lessees must comply with the LMU stipulations.

[47 FR 33179, July 30, 1982. Redesignated at 48 FR 41589-41594, Sept. 16, 1983, and amended at 51 FR 13229, Apr. 18, 1986; 62 FR 44370, Aug. 20, 1997]

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